

IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS 61412)  
AND 61413 FILED TO CHANGE THE POINT)  
OF DIVERSION, PLACE AND MANNER OF )  
USE OF WATER APPROPRIATED FROM AN )  
UNDERGROUND SOURCE WITHIN THE )  
AMARGOSA DESERT GROUNDWATER BASIN )  
(230) NYE COUNTY, NEVADA )

RULING  
**# 4271**

GENERAL

I.

Application 61412 was filed on July 19, 1995, by Barrick Bullfrog, Inc. to change the point of diversion, place and manner of use of 0.89 cubic feet per second (cfs) of underground waters previously appropriated under Permit 41860, for mining, milling, dewatering and domestic purposes for use within Sections 2 through 28, and 33 through 36 T.12S., R.46E.; Sections 7, 18, 19, 30, 31, T.12S., R.47E.; and Sections 1, 2, 3, T.13S., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 35, T.12S., R.46E., M.D.B.&M.<sup>1</sup>

Permit 41860 was issued on November 4, 1981, for 0.89 cfs for mining, milling and domestic purposes for use within Sections 17 through 20, T.12S., R.46E., M.D.B.&M., with the point of diversion being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  Section 18, T.12S., R.46E., M.D.B.&M.<sup>2</sup> Permit 41860 was cancelled on May 18, 1995, for failure to comply with the terms of the permit.

II.

Application 61413 was filed on July 19, 1995, by Barrick Bullfrog, Inc. to change the point of diversion, place and manner of use of 0.89 cfs of underground waters previously appropriated

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<sup>1</sup> File No. 61412, official records of the Office of the State Engineer.

<sup>2</sup> File No. 41860, official records of the Office of the State Engineer.

under Permit 42637, for municipal purposes for use within Sections 2 through 28, and 33 through 36 T.12S., R.46E.; Sections 7, 18, 19, 30, 31, T.12S., R.47E.; and Sections 1, 2, 3, T.13S., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 3, T.13S., R.46E., M.D.B.&M.<sup>3</sup>

Permit 42637 was issued on November 4, 1981, for 0.89 cfs for mining, milling and domestic purposes for use within Sections 17 through 20, T.12S., R.46E., M.D.B.&M., with the point of diversion being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 18, T.12S., R.46E., M.D.B.&M.<sup>4</sup> Permit 42637 was cancelled on May 18, 1995, for failure to comply with the terms of the permit.

### III.

After a written petition was filed and an administrative hearing held regarding the cancellation of Permits 41860 and 42637, the cancellation of Permits 41860 and 42637 was rescinded and the permits were assigned a new priority date of June 21, 1995.

### IV.

Applications 61412 and 61413 were timely protested by Amargosa Resources, Inc. ("ARI") on the basis that ARI has applications pending in the groundwater basin that, if granted, will have a priority date that predates the new priority date of Barrick Bullfrog's permits. ARI protests that if ARI's applications are granted the groundwater basin will have been fully appropriated leaving no water available to support Permits 41860 and 42637 or change Applications 61412 and 61413, thus, Barrick's permits would conflict with ARI's senior water rights. ARI also protested the applications on the basis that change applications cannot be approved for quantities in excess of their permitted rights. ARI's objection is based on the fact that Permits 41860 and 42637 were

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<sup>3</sup> File No. 61413, official records of the Office of the State Engineer.

<sup>4</sup> File No. 42637, official records of the Office of the State Engineer.

issued for a combined total duty of 200 million gallons annually (MGA); however, each of the change applications seeks to change the full duty of 200 MGA, thereby doubling the total combined duty of the base rights.<sup>5</sup>

FINDINGS OF FACT

I.

ARI filed Applications 58372, 58373, 58444, 58445 and 58446<sup>6</sup> in December 1992, and subsequently filed Applications 60272, 60273, 60274, 60275 and 60276 to change the place and manner of use of Applications 58372, 58373, 58444, 58445 and 58446. To date no permits to appropriate water have been granted to ARI on said applications and no determination has been made as to the approval or denial of said applications. The State Engineer finds that ARI does not presently have any valid water rights in the Amargosa Desert Groundwater Basin. The State Engineer further finds that when action is taken on ARI's applications, their dates of priority will properly be considered.

II.

Permits 41860 and 42637 were granted in 1981 and the quantity of water appropriated under said permits is accounted for in the determination of water presently appropriated from the Amargosa Desert Groundwater Basin. Permits 41860 and 42367 are valid water rights which grant Barrick Bullfrog, Inc. a right to beneficially use water from the groundwater basin. The State Engineer finds that Applications 61412 and 61413, filed to change Permits 41860 and 42367, respectively, do not represent new appropriations, but instead, seek to change existing valid water rights.

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<sup>5</sup> See ARI protests to Applications 61412 and 61413, File Numbers 61412 and 61413, official records in the Office of the State Engineer.

<sup>6</sup> File Nos. 58372, 58373, 58444, 58445 and 58446, official records in the Office of the State Engineer.

III.

Protestant ARI alleges that the approval of Applications 61412 and 61413 would conflict with its senior rights, if ARI's applications are approved. As found earlier, ARI does not presently have any water rights in Amargosa Valley. Therefore, the State Engineer finds that ARI's allegation is without merit and the approval of Applications 61412 and 61413 will not conflict with any existing rights. The State Engineer further finds that there is no evidence that the approval of Applications 61412 and 61413 would threaten to prove detrimental to the public interest.

IV.

A permit may be cancelled for failure to timely file proof of completion of the works<sup>7</sup> or proof of beneficial use.<sup>8</sup> The Nevada Revised Statutes provide a remedy in that a cancellation may be rescinded with the attendant penalty of a change in date of priority to the date that a written petition for review of the cancellation is filed in the Office of the State Engineer.<sup>9</sup> The statutes do not provide that the right to beneficially use the water is lost, if the permit has been reinstated. Permits 41860 and 42637 were cancelled and were later reinstated with a new priority date of June 21, 1995.

Nevada is a prior appropriation state<sup>10</sup> and the State Engineer has the authority to order the regulation and distribution of groundwater by priority.<sup>11</sup> To date, no such order related to the Amargosa Desert Groundwater Basin has been issued by the State

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<sup>7</sup> NRS 533.390.

<sup>8</sup> NRS 533.410.

<sup>9</sup> NRS 533.395.

<sup>10</sup> Jones v. Adams, 19 Nev. 78 (1885).

<sup>11</sup> NRS 534.110(6).

Engineer. If such an order is issued in the future, the State Engineer finds that the priority of all water rights will be appropriately considered.

V.

Permits 41860 and 42637 were issued for a total combined duty of 200 million gallons annually (MGA). Each of the change Applications 61412 and 61413 seeks to change the full duty of 200 MGA. An application to change can be issued for the quantity of water appropriated under the base right and no more. The State Engineer finds that Applications 61412 and 61413 may be issued for a total combined duty of 200 million gallons annually. Because the manner of use is different for the two applications, the Applicant must specify the quantity of water requested under each Application, with the sum being equal to 200 MGA.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action.<sup>12</sup>

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:<sup>13</sup>

- A. The proposed change conflicts with existing rights, or
- B. The proposed change threatens to prove detrimental to the public interest.

III.

NRS 533.345(1) provides that an application can be filed to change the place of diversion, manner or place of use of water already appropriated. Water already appropriated refers to water represented by a permit or certificate in good standing.<sup>14</sup> The

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<sup>12</sup> NRS Chapter 533.

<sup>13</sup> NRS 533.370.

<sup>14</sup> NRS 533.324.

State Engineer concludes that the base rights for Applications 61412 and 61413 are valid permitted water rights.

IV.

At the present time ARI has no existing water rights with which it can claim Applications 61412 and 61413 will conflict. The State Engineer concludes that the approval of Applications 61412 and 61413 will not conflict with any existing rights.

V.

ARI filed Applications 58372, 58373, 58444, 58445 and 58446 to appropriate approximately 25,000 AF of water. When ARI's applications are evaluated for either approval or denial, they must meet the criteria outlined in NRS 533.370 which provides that:

- A. There is unappropriated water in the source;
- B. The proposed use does not conflict with existing rights;  
and
- C. The proposed use does not threaten to prove detrimental to the public interest.<sup>15</sup>

When evaluating whether there is unappropriated water or whether the approval will conflict with existing rights, the State Engineer must consider the applicant's valid existing water rights as having been appropriated regardless of priority date.

VI.

The State Engineer concludes that if regulation is ever required in the Amargosa Desert Groundwater Basin, it will be regulated based on the priority of water rights that exist at that time.

VII.

The State Engineer concludes that Applications 61412 and 61413 can be approved for a total combined duty of 200 million gallons annually without interfering with existing rights.

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<sup>15</sup> NRS 533.370(3). This has been the criteria for approval since 1913 and is fundamental to Nevada Water Law and Water Law in the entire west.

VIII.

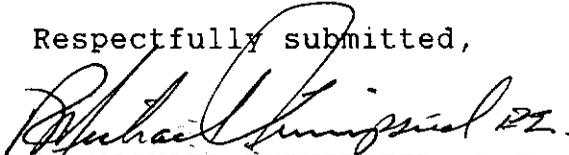
The State Engineer concludes that the approval of Applications 61412 and 61413 will not threaten to prove detrimental to the public interest.

RULING

The protests to Applications 61412 and 61413 are hereby overruled and said applications are hereby approved subject to the following conditions:

1. Payment of the statutory permit fees.
2. Barrick Bullfrog must indicate to the State Engineer which portion of the 200 MGA it intends to use under each of the change applications.
3. All other existing rights.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/ab

Dated this 22nd day of  
December, 1995.